

**REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on August 8, 2003, and the references cited therewith.

Claims 1, 2 and 16 are amended, claims 34-49 are canceled; as a result, claims 1-33 are now pending.

The amendments made herein have been to clarify the claims and are not intended to limit the scope of equivalents to which any claim element may be entitled. The amendments to the claims have support throughout the specification. No new matter has been added as a result. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

Claims 1 and 16 were amended to recite that the non-woven laminate and internally-tufted wire laminate, respectively, do not require elastic materials or fibers. Support for this amendment can be found in the specification at page 21, lines 17-20.

Claim 2 was amended to recite "at least one" layer.

**Affirmation of Election**

Restriction to one of the following inventions was required: Group I (claims 1-33) drawn to a laminate, Group II (claims 35-45) drawn to a process of producing an internally tufted laminated or Group III (claims 48-49) drawn to a kit. As the Office Action notes, Applicant's representative, Albin Nelson, provisionally elected with traverse to prosecute the invention of Group I, claims 1-33. Applicant confirms the election to prosecute the invention of Group I. The Examiner has withdrawn the claims to the non-elected invention, claims 34-49.

Applicant hereby cancels claims 34-49 without prejudice or disclaimer and reserves the right to later file continuations or divisions having claims directed to the non-elected inventions.

**35 USC 112 Objection**

The Examiner objected to claim 2 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

37 CFR 1.75(c) states that, "One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. . ."

Similarly, 35 USC 112, fourth paragraph states that, "a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed."

Applicant respectfully states that the criteria of further limiting an independent claim is rejected by MPEP § 608.01(n)(III), which recites: "A dependent claim does not lack compliance with 35 USC 112, fourth paragraph, simply because there is a question as to ... whether the further limitation in fact changes the scope of the dependent claim from that of the claim from which it depends." Instead, "the test as to whether a claim is a proper dependent claim is that it shall include every limitation of the claim from which it depends (35 U.S.C. 112, fourth paragraph) or in other words that it shall not conceivably be infringed by anything which would not also infringe the basic claim." MPEP § 608.01(n)(III).

However, in an effort to facilitate prosecution, Applicant has amended claim 2 for clarification.

Reconsideration and withdrawal of this rejection is respectfully requested.

#### *§102 Rejection of the Claims*

Claims 1-11, 16-27, and 32-33 were rejected under 35 USC § 102(e) as being anticipated by Lange et al. (U.S. Patent No. 2002/0127937 A1). Applicant respectfully traverses this rejection.

Applicant further does not admit that Lange is prior art, and reserves the right to swear behind it at a later date. Nevertheless, Applicant respectfully submits that the claims are distinguishable over Lange for the reasons argued below.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.

#### Claim 1

The Office Action asserts that Lange teaches a composite material comprising at least one elastic layer including a non-woven layer and at least one gatherable layer joined at spaced apart locations to the elastic layer so that the gatherable layer is gathered between the spaced-apart locations. The Office Action equates the elastic layer to one of Applicant's non-woven

layers and the gatherable layer to Applicant's layer of tufted material. The Office Action concludes that when the composite material is used as a wet-wipe (in Lange), a soft elastic layer or non-woven layer is provided on both exposed surfaces of the wipe. Applicant respectfully traverses these assertions.

Lange teaches a composite material having continuous gathers directed externally. Such gathers result from the forces of stretching and retraction by an elastomer core, with retraction occurring after lamination. The gathers in Lange are continuous and directed externally. (The layers in Lange are formed individually and brought together just prior to the calendar/embossing roll). Lange *requires* elastic material or fibers to produce the soft, gathered product (See Specification, page 21, lines 18-20). Therefore, Applicant objects to the assertion in the Office Action that the required elastic layer in Lange can be equated to one of Applicant's non-woven layers which does not require elastic materials or fibers.

In contrast, claim 1, as amended, recites a nonwoven laminate comprising at least one layer of tufted material located between at least two outer layers of non-woven material wherein the nonwoven laminate does not require elastic materials or fibers.

Lange does not teach each element of claim 1 because, for example, it does not teach a nonwoven laminate that does not require elastic materials or fibers.

Lange does not anticipate the claims, as amended. Applicant respectfully submits that claim 1 is allowable in its present form. Since claims 2-4 depend from and further define claim 1, these claims are also believed to be allowable in their present form. Notification to this effect is respectfully requested.

### Claim 2

The Office Action has not given any patentable weight to claim 2. However, claim 2 has been amended for clarification and is believed to be allowable in its present form. Notification to this effect is respectfully requested.

### Claims 3, 8 and 10; claim 4 and claim 5

With regard to claims 3, 8 and 10, the Office Action asserts that Lange teaches that a gatherable layer is the equivalent of a tufted layer which can be made from microfibers formed

by various extrusion processes with polyolefins, such as polyethylene and polypropylene, and that Lange teaches that the elastic layer or non-woven layer can be made from a mixture of elastic and non-elastic fibers, such as a mixture of meltblown thermoplastic fibers and other materials such as wood pulp which are combined in a gas stream so that an intimate entangled commingling is formed. The Office Action concludes that this type of non-woven is known in the art as coform.

With regard to claim 4, the Office Action asserts that Lange teaches that the elastic layer is a non-woven layer which can be made from a mixture of elastic and wood pulp and that wood pulp is cellulose based and, therefore is absorbent.

Applicant respectfully traverses these assertions.

The Office Action has again improperly equated the elastic layer in Lange to one of Applicant's non-woven layers and the gatherable layer in Lange to one of Applicant's tufted layers.

Additionally, Applicant respectfully submits that claims 3 and 4 are allowable in their present form for the reasons stated above.

With regard to claim 5, the Office Action asserts that Lange teaches that the composite can comprise two gatherable layers which are again equated to Applicant's inner tufted laminate. The Applicant respectfully traverses this assertion for the reasons stated above.

Lange teaches gathers, and not tufts, and these gathers are directed externally.

In contrast, claim 5 recites a nonwoven laminate comprising at least two layers of tufted material oriented to produce an inner tufted laminate.

Lange does not anticipate the claims, as amended. Applicant respectfully submits that claim 5 is allowable in its present form. Since claims 8 and 10 depend from and further define claim 5, these claims are also believed to be allowable in their present form. Notification to this effect is respectfully requested.

#### Claims 6, 7, 9 and 11

With regard to claim 6, the Office Action asserts that the composite comprises at least one gatherable layer which is a tufted layer, and concludes that in one embodiment the composite

can contain three gathered layers (again referred to as tufted layers) in which one is a single- "tufted" layer and the other is a bi-layer "tufted" laminate.

With regard to claim 7, the Office Action asserts that Lange teaches that when the composite material is used as a wet-wipe, a soft elastic layer, which is equated to a non-woven layer, is provided on both exposed surfaces of the wipe and concludes that in one embodiment the composite can contain a bi-layer structure comprising a soft elastic layer (again equated with a non-woven layer) and one of the gathered layers (again referred to as tufted layers).

With regard to claim 11, the Office Action asserts that Lange teaches that the gatherable layer is a tufted layer which can be made from polyolefin fibers and that it is known that polyolefins are thermoplastic and capable of being thermally bonded.

Applicant respectfully traverses these assertions.

The Office Action has again improperly equated the elastic layer in Lange with one of Applicant's non-woven layer and the gatherable layer in Lange to one of Applicant's tufted layers.

With regard to claim 9, the Office Action asserts that it has given no patentable weight to the phrase "wire-tufted," equating it with a process limitation. The Office Action then attempts to support the rejection directed to Applicant's article claim 9 by providing an argument based on process limitations. Specifically, the Office Action asserts that Lange teaches that the gatherable layer is a tufted layer which can be made from microfibers formed by various extrusion processes. Applicant respectfully traverses these assertions.

Although it is true that the tufts in Applicant's invention are formed with a wire, the phrase "wire-tufted" is used herein as an adjective to the word "laminates" to describe the article itself. Those skilled in the art understand that other types of protrusions are also possible, such as the "retraction-type" gathers of Lange. (A "retraction-type" gather results when an elastomer core retracts after lamination, and attached non-elastic facings are thereby caused to gather into a series of peaks and valleys).

Additionally, although claim 9 is not directed to a process limitation, Applicant again notes the following in light of the Office Action's statement regarding the process of Lange, namely that the layers in Lange can be formed by *any* extrusion process: The extrusion processes taught by Lange involve producing a composite material having *continuous* gathers

directed *externally*. Such gathers result from the forces of stretching and retraction by an *elastomer core*, with the retraction occurring after lamination. (The layers in Lange are formed individually and brought together just prior to the calendar/embossing roll). Lange *requires* elastic material or fibers to produce the soft, gathered product (See Specification, page 21, lines 18-20). (Applicant's method claims were withdrawn by the Examiner).

Lange does not anticipate the claims. Additionally, claims 6, 7, 9 and 11 depend from and further define claim 5, thus including its limitations by their dependency. As a result, claims 6, 7, 9 and 11 are believed to be allowable in their present form. Notification to this effect is respectfully requested.

#### Claim 16

The Office Action states that no patentable weight was given to the phrase "an internally wire-tufted laminate" and refers to this phrase as a "recitation with respect to the manner in which a claimed article is intended to be employed" and a "process limitation." The Office Action continues by asserting that Lange teaches a composite material comprising at least one elastic layer including a non-woven layer and at least one gatherable layer joined at spaced apart locations to the elastic layer so that the gatherable layer is gathered between the spaced-apart locations. The Office Action concludes that by gathering the gatherable web in this manner, the layer will be in a wave-like form with depressions and valleys and again improperly equates the elastic layer to one of Applicant's non-woven layer and the gatherable layer to one of Applicant's layer of tufted material. Additional comments reference methods noted in the Lange specification by which the gathers can be formed. Applicant respectfully traverses these assertions.

The phrase "internally wire-tufted laminate" is not a recitation with respect to the manner in which a claimed article is intended to be employed, and as such, is not a process limitation. The phrase "internally wire-tufted" is used as an adjective to the word "laminate" and describes the article itself.

Additionally, it appears the Office Action is again attempting to support a rejection directed to an article claim by relying on arguments based on method limitations. The Office Action then further presumes that the methods of Lange are identical to the methods of the

present invention. Applicant respectfully states that there are clear differences in Applicant's processes and the processes described above for Lange, but again notes that Applicant's method claims have been withdrawn by the Examiner. As the Office Action states on page 6, "a process limitation is not given patentable weight in a claim directed to an article."

Claim 16, as amended, recites an internally wire-tufted laminate comprising at least two coform outer layers surrounding an inner layer of tufted meltblown material, the inner layer having a plurality of inner tufts and valleys and a plurality of outer depressions, the outer depressions visible from an exterior surface of the laminate wherein the internally wire-tufted laminate does not require elastic materials or fibers.

Lange does not teach each element of claim 16, as amended, because, for example, it does not teach a laminate that does not require elastic materials or fibers.

Lange does not anticipate claim 16 as amended. Applicant respectfully submits that claim 16 is allowable in its present form. Notification to this effect is respectfully requested.

#### Claims 17-21

With regard to claim 17, the Office Action repeats the assertions regarding claim 11.

With regard to claim 18, the Office Action asserts that Lange teaches that a composite material can comprise a first gatherable web layer and a second gatherable web layer connected together when fused to the elastic sheet and considers the two gatherable layers as tufted materials. The Office Action further asserts that by spunbonding or carding, both sides of the elastic layer (again referred to as a nonwoven layer) would have gatherable protrusions (again referred to as "tufted" protrusions) and that when the first and second gatherable web layers are connected together, the gatherable protrusions (referred to as tufts) and valleys from each layer will be facing each other. Applicant respectfully traverses these assertions.

As noted above, the Lange teaches gathers, not tufts, which are directed externally, such that they do not face each other.

With regard to claims 19 and 20, the Office Action asserts that Lange teaches that an elastic fibrous web and the gatherable layers can be bonded together using a smooth anvil roller and patterned calender roller and that Lange teaches that various bonding patterns can be used

and the bonding points are preferably evenly distributed over the bonding area of the composite material.

The Office Action is again attempting to support a rejection directed to article claims by relying, at least in part, on arguments based on method limitations. The Office Action further improperly concludes that the methods of Lange and the methods of the present invention are the same.

With regard to claim 21, the Office Action asserts that Lange teaches that the composite material is suitable for disposable products such as diapers, tissues and wipes.

Again, the composite material in Lange has gathers, and not tufts, and these gathers are directed externally.

Lange does not anticipate the claims. Additionally, claims 17-21 depend from and further define claim 16, thus including its limitations by their dependency. As a result, claims 17-21 are believed to be allowable in their present form. Notification to this effect is respectfully requested.

#### Claims 22 and 27

The Office Action repeats the assertions regarding claim 1.

Lange teaches an externally gathered laminate.

In contrast, claim 22 recites an absorbent sheet comprising an internally tufted laminate; and an added liquid.

Lange does not teach each element of claim 22, because it does not teach an internally tufted laminate.

Lange does not anticipate claim 22. Applicant respectfully submits that claim 22 is allowable in its present form. Since claim 27 depends from and further defines claim 22, this claim is also believed to be allowable in its present form. Notification to this effect is respectfully requested.

#### Claims 23-26

With regard to claims 23-26, the Office Action asserts that Lange teaches that the composite material is an "internally tufted" laminate which can contain various components

(claim 23), can contain lotions and/or medicaments (claim 24), can be a wet-wipe material (claim 25)and can be disposable (claim 26).

Again, Lange teaches an externally gathered laminate, not an internally tufted laminate.

Lange does not anticipate the claims. Additionally, claims 23-26 depend from and further define claim 22, thus including its limitations by their dependency. As a result, claims 23-26 are believed to be allowable in their present form. Notification to this effect is respectfully requested.

#### Claims 32 and 33

The Office Action repeats the assertions regarding claims 19 and 20.

The Office Action is again attempting to support a rejection of an article claim by relying on what is presumed to be similar or identical processes of Lange and the present invention.

Lange does not anticipate the claims. Additionally, claims 32-33 depend from and further define claim 22, thus including its limitations by their dependency. As a result, claims 32-33 are believed to be allowable in their present form. Notification to this effect is respectfully requested.

#### §103 Rejection of the Claims

Claims 12-15 and 28-31 were rejected under 35 USC § 103(a) as being unpatentable over Lange et al. The Applicant respectfully traverses this rejection.

The Office Action asserts that Lange discloses the claimed invention except that each gather (which is again equated with a tuft), has the length of claims 12 and 28, claims 13 and 29, claims 14 and 30 and claims 15 and 31. The Office Action continues by noting that a gather is a tuft having a length which is a result effective variable and states that as length increases, softness and bulkiness of the fabric increases. The Office Action concludes that it would have been obvious to create tufts of the particular lengths recited in the above claims since discovering an optimum value of a result effective variable involves only routine skill in the art.

The Office Action has again improperly equated the gathers in Lange with the tufts in Applicant's invention. Again, Lange teaches a composite material having continuous gathers directed externally. Such gathers result from the forces of stretching and retraction by an

elastomer core, with retraction occurring after lamination. The gathers in Lange are continuous and directed externally. (The layers in Lange are formed individually and brought together just prior to the calendar/embossing roll). Lange *requires* elastic material or fibers to produce the soft, gathered product (See Specification, page 21, lines 18-20).

Applicant respectfully submits that the Office Action has not established the *prima facie* obviousness of the present claims. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Applicant also respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found in Lange. Since all the elements of the claim are not found in the reference, Applicant assumes that the Examiner is taking official notice of the missing elements. Applicant respectfully objects to the taking of official notice with a single reference obviousness rejection and, pursuant to MPEP § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of this position. If the Examiner cannot cite a reference that teaches the missing element, Applicant respectfully requests that the Examiner provide an affidavit that describes how the missing element is present in the prior art. If the Examiner cannot cite a reference or provide an affidavit, Applicant requests withdrawal of the rejection and reconsideration and allowance of the claims.

Furthermore, claims 12-15 and 28-31 are all dependent claims. The additional limitations provided in dependent claims cannot by themselves be rendered obvious over the cited references if the independent claim from which it depends is determined to be nonobvious.

Applicant is the first to provide a nonwoven laminate comprising at least two layers of tufted material oriented to produce an inner tufted laminate, as recited in claim 5, and the first to

provide the nonwoven laminate of claim 5 in combination with the recitations in each of claims 12-15. Applicant is also the first to provide an absorbent sheet comprising an internally tufted laminate; and an added liquid as recited in claim 22, and the first to provide the absorbent sheet of claim 22 in combination with the recitations in each of claims 28-31.

Applicant respectfully submits that independent claim 5 and claims 12-15 which depend therefrom, and independent claim 22 and claims 28-31 which depend therefrom, are patentably distinct from the cited reference. Claims 12-15 and 28-31, each viewed as a whole, are not suggested by the cited references and not obvious under 35 USC § 103(a).

Reconsideration and withdrawal of this rejection is respectfully requested.



## AMENDMENT AND RESPONSE UNDER 37 CFR § 1.111

Serial Number: 10/021867

Filing Date: December 17, 2001

Title: INTERNALLY-TUFTED LAMINATES AND METHODS OF PRODUCING SAME

Page 17  
Dkt: 1443.009US1CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (515) 233-3865 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

THOMAS J. KOPACZ ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(515) 233-3865

Date NOVEMBER 10, 2003

By Barbara J. Clark  
Barbara J. Clark  
Reg. No. 38,107

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 10 day of November, 2003.

Name

Gina M. Uphus

Signature

Gina M. Uphus